

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BOX ELDER CREEK BASIN (39E)
PRELIMINARY DECREE

* * * * *

CLAIMANT: L & L Ranch Inc.

CASE 39E-0508-R-2023

39E 23838-00

39E 23840-00

39E 23844-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned claims appeared in the Preliminary Decree for Box Elder Creek (Basin 39E) with the following remarks:

39E 23838-00 and 39E 23844-00:

THE CLAIMED PERIOD OF USE MAY BE QUESTIONABLE. THE RESERVOIR QUESTIONNAIRE RECEIVED 10/10/2018, INDICATES A PERIOD OF USE FROM JAN 1 TO DEC 31.

39E 23840-00:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 4 CFS.

These remarks were not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. On February 17, 2023, the above-captioned claims were consolidated into case 39E-0508-R-2023 and a status conference was set for March 22, 2023. Claimant L&L Ranch Inc. (L&L Ranch) failed to appear. On March 24, 2023, an Order Setting Filing Deadline (Order) was issued requiring the claimant to file documentation showing good cause why they failed to appear and detailing their position on the proposed resolution of the issue remarks discussed in the Order. The Order stated that if nothing was filed by the deadline, this Master would conclude that L&L Ranch agreed with the modifications to the claims discussed in the Order.

FINDINGS OF FACT

1. The Period of Use for Claims 39E 23838-00 and 39E 23844-00 should be modified to January 1 to December 31 pursuant to the reservoir questionnaire, the issue remark and the Order.
2. The flow rate for claim 39E 23840-00 should be decreased to 4 CFS pursuant to the issue remark and the Order.
3. Modification of the claims as discussed above resolves the issue remarks appearing on the claims.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

CONCLUSION OF LAW

1. The claims should be modified as discussed above. Modification of the claims resolves the issue remarks on the claims.

RECOMMENDATION

1. Upon review the record in this case, the above-captioned claims should be modified as discussed above. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

L & L Ranch Inc.
930 Hammond Road
Hammond, MT 59332-9717

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 23838-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: L & L RANCH INC
930 HAMMOND RD
HAMMOND, MT 59332 9717

Priority Date: JANUARY 5, 1904

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 300.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 185.00

Source Name: TRAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	15	5S	58E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** LOWER BLACKFORD RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWNE	15	5S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 12.00 FEET

Depth: 9.00 FEET

Surface Area: 45.70 ACRES

Capacity: 164.52 ACRE-FEET

THE DAM EXTENDS INTO THE W2NENE , SEC 15 TWP 5S RGE 58E CARTER COUNTY.

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		SWSE	3	5S	58E	CARTER

2	158.00		10	5S	58E	CARTER
3	2.00	E2SESW	3	5S	58E	CARTER
Total:						
	185.00					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

23838-00

23840-00

23844-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 23840-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: L & L RANCH INC
930 HAMMOND RD
HAMMOND, MT 59332 9717

Priority Date: MARCH 2, 1956

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 156.00

Source Name: BOXELDER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	10	5S	58E	CARTER

Period of Diversion: FEBRUARY 15 TO NOVEMBER 15

Diversion Means: PUMP

Period of Use: FEBRUARY 15 TO NOVEMBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		SE	3	5S	58E	CARTER
2	122.00		N2	10	5S	58E	CARTER
3	7.00		SENE	9	5S	58E	CARTER
4	2.00		S2SESW	3	5S	58E	CARTER

Total: 156.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

23838-00

23840-00

23844-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 23844-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: L & L RANCH INC
930 HAMMOND RD
HAMMOND, MT 59332 9717

Priority Date: JULY 31, 1945

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 300.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 185.00

Source Name: UNNAMED TRIBUTARY OF TRAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENESE	15	5S	58E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENESE	15	5S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 14.00 FEET

Depth: 11.00 FEET

Surface Area: 25.00 ACRES

Capacity: 110.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		SWSE	3	5S	58E	CARTER
2	158.00			10	5S	58E	CARTER

